

In re Tierra del Rey LLC
Chapter 11
Case No. 15-04253-LT11
Date filed: June 29, 2015

Movant: AP Mortgage Company

MW-1

CORRECTED
**POINTS & AUTHORITIES IN SUPPORT OF AP MORTGAGE
COMPANY'S MOTION FOR RELIEF FROM STAY**

**MOVANT IS ENTITLED TO RELIEF FROM
THE AUTOMATIC STAY UNDER 11 U.S.C. §362(d)(2)**

11 U.S.C. §362(d) provides:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –

. . .

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest . . ."

The purpose of adequate protection is ensure "as nearly as possible under the circumstances of the case" that a secured creditor is provided "with the value of his bargained for rights." [*In re Swedeland Development Group, Inc.*, 15 F. 3d 552, 564 (1994)] The most common factors indicating that a creditor's interest is adequately protected are the "sufficiency of the equity cushion, periodic payments, additional liens, or a

good prospect of a successful reorganization.” [*In re Liona Corp.* 68 BR 761, 767 (Bankr. E.D. Pa (1987))] For purposes of Movant’s motion for relief from stay, this Court’s resolution of the issue of “adequate protection” should be dispositive.

Courts generally find an equity cushion of more than 20% to be sufficient; equity cushions of less than 11% are almost universally considered insufficient. [*In re Hefty*, 2011 WL 2470686 (Bankr. D. Mont. 2011)]

As established by the accompanying declaration of certified real estate appraiser Jeffrey A. Stark, the fair market value of the subject property is \$7,700,000; therefore, Debtor’s equity cushion is insufficient to provide adequate protection to Movant:

\$7,700,000	Appraised fair market value
(\$539,000)	less costs of sale (7%) ¹
(\$5,008,712)	1 st trust deed obligation ²
<u>(\$1,432,636)</u>	AP Mortgage obligation ³
\$ 719,652	Equity

Movant’s equity cushion is only **9.34%** (\$719,652 ÷ \$7,700,000).

Dated: August 27, 2015

_____/s/Michael Wright_____
Michael Wright, Attorney for Movant

¹ See paragraph 4 of accompanying declaration of Curtis Gabhart

² See paragraph 4 and Exhibit I to accompanying declaration of Paul Taccone

³ See paragraph 3(e) and Exhibit F to accompanying declaration of Paul Taccone

In re Tierra del Rey LLC

Case No. 15-04253-LT11.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 5190 Governor Drive, #207, San Diego, CA 92122

A true and correct copy of the foregoing documents described as: **Corrected Points & Authorities in Support of AP Mortgage Company's Motion for Relief From Stay – Real Property**

was served in the manner indicated below:

I. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

☐ Service information continued on attached page

II. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL**(indicate method for each person or entity served):

On August 28, 2015, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Tierra del Rey LLC (Debtor-in-Possession), 2607 First Ave., Suite 1, San Diego, CA 92103
K. Todd Curry, Curry Advisors, PLC (Attorney for Debtor), 525 B. Street, #1500, San Diego, CA 92101
United States Trustee (Attention: Kristin Mihelic), 402 W. Broadway, #600, San Diego, CA 92101
David M. Hershorin, Esq. (Attorney for Fannie Mae), 27422 Portola Pky, #360, Foothills Ranch, CA 92610

Also, see attached service list

☐ Service information continued on attached page

III. **SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL** (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: August 28, 2015

By: Michael Wright

/s/Michael Wright

Tierra Del Rey**USBC Case No. 15-2015-04253-LT11****Service List**

Aloha City Pest Control Inc 340 West 26th Street San Diego, CA 92102	Cox Cable PO Box 79171 5251 Federal Blvd San Diego, CA 92105	Edco Disposal Corp PO Box 6208 6670 Federal Blvd Lemon Grove, CA 91945
Foothills Pool Service PO Box 274 La Mesa, CA 91945	Franchise Tax Board Bankruptcy Section MS A-340 PO Box 2952 Sacramento, CA 95812-2952	HD Supply 10641 Scripps Summit Court San Diego, CA 92131
Helix Water District PO Box 513597 La Mesa, CA 91945	Home Depot Credit Card PO Box 182676 Columbus, OH 43218-2676	Howard Burns, Esq 8880 Rio San Diego Dr. Suite 800 San Diego, CA 92108
Jamie Jo Hlavin 110 Maple Street San Diego, CA 92103	JES Taxes 606 Cassidy Street, Suite A Oceanside, CA 92054	Marlin Leasing Corporation 300 Fellowship Road Mount Laurel, NJ 08054
Michael C. Dallo Tax Attorney & CPA 406 9th Avenue, Suite 212 San Diego, CA 92101	Pitney Bowes PO Box 371874 Pittsburgh, PA 15250-7874	Preston Delery and Cassandra Inzunza 225 Broadway, Suite 2100 San Diego, CA 92101
SSD Systems Security Signal 1740 N. Lemon Street Anaheim, CA 92801		